IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1063 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI SOMABHAI PATANVADIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1063 of 1995

MR JB DASTOOR amicus curiae for appellants

MR KC SHAH APP for Respondent No. 1 State

CORAM : MR.JUSTICE A.M.KAPADIA
and
MR.JUSTICE H.H.MEHTA

Date of decision: 13/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. This appeal which is filed under Section 374 (2) of the Code of Criminal Procedure, 1973 ('the Code' for short) is directed against the judgment and order dated August 3, 1995 rendered by the learned Additional Sessions Judge, Surat in Sessions Case No.233 of 1994 by which appellant No.1 is convicted under Sections 306 and 498-A of the Indian Penal Code ('IPC' for short) and punished with R.I. for ten years and fine of Rs.100/and in default of payment of fine to suffer further punishment of simple imprisonment for one month for the commission of offence under section 306 of IPC and he was also punished with R.I. for three years and fine of Rs.100/and in default of payment of fine further punishment of simple imprisonment for one month for the offence under Section 498-A of IPC and it is ordered that both the substantive sentences to run concurrently whereas appellant No.2 is convicted under Section 498-A of IPC and punished with R.I. for three years and fine of Rs.100/- and in default of payment of fine further punishment of S.I. for one month.

2. The facts of the case have been detailed in the judgment of the learned Additional Sessions Judge and, therefore, it is not expedient to repeat the same all over again in verbatim and in detail in this judgment. However, the basic facts which are necessary to be discussed in this appeal are that:

(i) Deceased Suman was married with appellant No.1 prior to four years of the incident. It was a 'love marriage'. Out of the said wedlock one son named "Yogesh" was born who was aged about 1 1/2 years at the time of the incident. Appellant No.2 is the mother-in-law of the deceased.

(ii) The incident had taken place on 18.9.1994 in the house of the appellants situated near Limbayat Grave Yard, adjacent to Saibaba Society, at Surat. On the fateful day, in the evening deceased brought dried fish of Rs.2/- for preparing curry which was the main cause of the quarrel between the deceased and the appellants. During the course of quarrel, appellant No.1 gave her fist and kick blows. The quarrel proceeded upto 8.30 night. It is inter alia stated in the FIR lodged by the deceased that in trivial matters quarrel took place between them and she was mentally and physically harassed by appellant No.1 and she was fed up with the life and on the fateful day as a result of the quarrel she decided to put to an end to her life and, therefore, she poured

kerosene upon her and by igniting match stick she put herself to fire. It is also alleged that at that time the appellants run away from the scene of occurrence. The injured run outside the house shouting to rescue her and people assembled there and one Kanubhai who happens to be the maternal brother of the appellant No.1 took her to Civil Hospital for treatment where she lodged the complaint before the PSI of Limbayat Police Station. The said complaint was recorded as per the narration of the injured and an offence was registered against both the appellants. Thereafter the PSI called the Executive Magistrate for recording her dying declaration and it was recorded by the Executive Magistrate on 19.9.1994. Thereafter Panchnama of the scene of offence was prepared, statements of the witnesses were recorded and during the course of treatment as the deceased died, inquest panchnama on the dead body of the deceased was prepared and the dead-body was sent for post mortem examination. On completion of necessary investigation, the appellants were charge-sheeted for the commission of the offences punishable under sections 306 and 498-A of IPC in the court of the learned Chief Judicial Magistrate, Surat who committed the case to the court of Sessions, Surat for trial.

(iii) The learned Additional Sessions Judge framed charge at Ex.2 against both the appellants of the offence punishable under Sections 306 and 498-A of IPC. The charge was read over and explained to both of them to which they pleaded not guilty and claimed to be tried and thereupon they were tried in Sessions Case No. 233 of 1994 by the learned Additional Sessions Judge, Surat.

(iv) In order to bring home the culpability of the appellants/accused the prosecution has examined following witnesses:

P.W.1 - Kanubhai Bhailalbhai Patanwadia - Ex.10 - son of the maternal uncle of appellant No.1.
P.W.2 - Bhagwanbhai Shyamrao Goswami - Ex.11.
P.W.3 - Baldevbhai Prabhubhai - Ex.12 - Executive Magistrate who recorded the dying declaration of deceased.
P.W.4 - Dr.Sanjeev Mahendrabhai Desai - Ex.16 - Doctor who treated the deceased.
P.W.5 - Dr. Meghrekha Hasmukhbhai - Ex.20 - the doctor who performed post mortem examination.
P.W. 6 - PSI Vijaykumar Dangalrao Patil - Ex.22.

(v) The prosecution has also placed reliance on the following documents to prove the culpability of the

appellants/accused:
Ex.23 - Complaint.
Ex.13 - Dying declaration.
Ex.9 - Inquest Panchnama
Ex.24 - Panchnama of scene of offence
Ex.21 - P.M. notes
Ex.25 - Entry No.16/94 of Civil Vardhi given on telephone.

(vi) On analysis, appreciation, evaluation and scrutiny of the evidence on record, the learned trial Judge came to the conclusion that suicidal death of deceased Suman has been proved. She has also held that deceased was subjected to mental and physical cruelty as defined in explanation 2 of section 498-A of IPC by the appellants and therefore both the appellants are held guilty of the offence under Section 498-A of IPC. She has also further held that appellant No.1 has intentionally aided and instigated the deceased to put an end to her life and thereby abetted to commit suicide as defined under Section 107 of IPC and thereby he has committed the offence under section 306 of IPC and accordingly he is held guilty of commission of the said offence of abetment to suicide. After recording categorical finding against both the appellants for the commission of the offences as mentioned hereinabove, the learned trial Judge has awarded the punishment to both of them to which reference is made in earlier paragraph of this judgment vide judgment and order dated August 3, 1995. It is this judgment and order of conviction and sentence which is now on the anvil of scrutiny before us in this appeal which is filed by both the appellants/original accused.

3. Mr. J.B.Dastoor, learned advocate appearing as amicus curiae on behalf of the appellants at the outset, fairly conceded that so far as the evidence with regard to the dying declaration is concerned, there is no dispute, as the dying declaration was recorded by the Executive Magistrate after ascertaining from the concerned doctor who treated the deceased about the mental and physical state of the victim. However, he seriously assailed the finding recorded by the learned Additional Sessions Judge with respect to holding appellant No.1 guilty of offence under section 306 of IPC. According to him, there is no evidence worth consideration with regard to commission of offence under Section 306 of IPC by appellant No.1. In this connection he has invited our attention to the definition of 'abetment' envisaged under Section 107 of IPC. The learned amicus curiae also pointed out that on the basis

of the evidence on record it can be gathered that the deceased was having a weak mind as a result thereof for a small quarrel in connection with a trivial matter which is not unusual in the families of downtrodden she put an end to her life and therefore appellant No.1 cannot be connected with the same. So far as the finding recorded by the learned Additional Sessions Judge with regard to commission of offence under section 498-A of IPC against both the appellants is concerned, according to him, there is scanty of evidence as quarrel in the community to which both the appellants and the deceased belonged is not unusual. He, therefore, contended that both the appellants also cannot be held guilty of the offence under section 498-A of IPC. In this connection the learned amicus curiae has taken us through the evidence of the witnesses, the complaint which has become dying declaration as after giving the complaint the deceased succumbed to the injuries as well as the dying declaration recorded by the Executive Magistrate. According to him, case against both the appellants has not been proved. However, the learned Additional Sessions Judge has wrongly held both the appellants guilty of offence under section 498-A of IPC and appellant No.1 under Section 306 of IPC also which is contrary to the evidence on record. He, therefore, urged that the judgment and order of conviction and sentence deserves to be quashed and set aside by allowing this appeal and prayed to allow this appeal.

4. Mr. K.C. Shah, learned APP has contended that there is ample evidence on record to show that the deceased was subjected to mental and physical cruelty at the hands of both the appellants and on the fateful day both the appellants quarrelled with her which was a daily routine and therefore the deceased having fed up with the life decided to put an end to her life and in a weak moment poured kerosene on her body and ignited with a match stick. Mr. Shah therefore contended that appellant No.1 has intentionally aided and instigated the deceased to commit suicide and the learned trial Judge has rightly held appellant No.1 guilty of the offence under sections 306 and 4098-A and appellant No.2 for the offence under Section 498-A of the IPC. He further contended that if this Court takes this type of incident lightly and leniently such type of offences would go on increasing which is a menace to the society and, therefore, this Court in exercise of appellate powers may not interfere with the judgment and order of conviction and sentence imposed upon both the appellants. He therefore urged to dismiss the appeal as it lacks merits.

5. We have considered the submissions advanced by Mr. Dastoor, learned advocate who is appearing as amicus curiae on behalf of the appellants and Mr. Shah, learned APP for the respondent - State. We have also perused the record and proceedings of the case which have been called for and gone through the entire evidence recorded by the learned trial Judge.

6. At the outset be it stated that law on the point of dying declaration has been now settled by catena of decisions of the Supreme Court. In the case of Laxman v. State of Maharashtra, (2002) 6 SCC 710, a Constitution Bench of five Judges of the Supreme Court has ruled that where the medical certificate indicated that the declarant was conscious it was indeed a hypertechnical view to say that there was no certification as to fitness of state of mind of the declarant more so when the fitness of the declarant's state of mind was proved by the testimony of the Magistrate who had recorded the dying declaration. Applying the principle laid down by the Supreme Court in the above referred to judgment to the facts of the present case, it cannot be gainsaid that in the instant case, the deceased on receipt of the burn injuries was hospitalized and there she stated before the PSI about the alleged incident wherein it was categorically stated by her that she was subjected to mental and physical cruelty at the hands of both the appellants and therefore she decided to put an end to her life and as a result thereof by pouring kerosene on her body, she put herself to fire by igniting a match stick. The said fact was recorded by the PSI in the complaint which has become dying declaration as the injured succumbed to the injuries thereafter. The matter did not rest there. After recording the said complaint immediately on the next day the Executive Magistrate also recorded the dying declaration of the injured wherein also she gave similar version and thereafter she succumbed to the injuries. Therefore there are two written dying declarations before us which are consistent with regard to the alleged incident. From the aforesaid two dying declarations, the suicidal death of deceased is amply proved. There is no reason to take contrary view than the view taken by the learned Additional Sessions Judge that deceased committed suicidal death.

7. Now the next question which falls for determination of this court is whether appellant No.1 has committed the offence of abetting to commit suicide. Section 107 of the IPC defines abetment to mean that a person abets the doing of a thing if he firstly, instigates any person to do that thing; or secondly,

engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing to that thing.

8. Before we advert to the evidence on record to find out the culpability of appellant No.1 with respect to commission of offence under Section 306 of IPC, we may refer to few decisions of the Supreme Court for the purpose of deciding this case:

(i) Swamy Prahaladdas v. State of M.P., 1995 Supp. (3) SCC 438. In that case the appellant was charged for an offence under Section 306 of IPC on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die'. In that case the Supreme Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

(ii) Mahendra Singh v. State of M.P., 1995 Supp. (3) SCC 731. In that case the appellant was charged for an offence under Section 306 of IPC basically based upon the dying declaration of the deceased which reads as under:

> "My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of those reasons and being harassed I want to die by burning."

The Supreme Court considering the definition of 'abetment' under section 107 of IPC found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. The Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

(iii) In the case of Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618, the Supreme Court while considering the charge framed and conviction for an offence under Section 306 of IPC on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had

said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused, the Supreme Court said as under:

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

(iv) In the case of Sanju v. State of M.P., 2002 AIR SCW 2035 the Supreme Court has held that the word "instigate" denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. In that case in a quarrel the accused told the deceased 'to go and die' and the Supreme Court held that that itself does not constitute the ingredient of 'instigation'. Presence of mens rea therefore is the necessary concomitant of instigation. The fact that the deceased committed suicide after two days of the incident which is not proximate to the abusive language uttered by the accused. The fact that the deceased committed suicide two days after the incident would itself clearly pointed out that it is not the direct result of the quarrel taken place when it is alleged that the accused had used the abusive language and also told the deceased to go and die.

9. Reverting to the facts of the present case, so far as the evidence on record with regard to the suicide is concerned, on having perusal of the complaint Ex.23 recorded by PSI and dying declaration at Ex.13 recorded by Executive Magistrate wherein the injured had unequivocally stated that on the day of the incident in the evening she purchased dried fish of Rs.2/- for preparing curry and her mother-in-law and her husband picked up quarrel with her and her husband gave her fist and kick blows and therefore she was fed up with her life and decided to die and by pouring kerosene on her body

ignited a match stick and put herself on fire. Her husband and mother-in-law ran away from the scene. After setting herself on fire, she went to the Railway colony burning where Kanubhai, maternal brother of her husband took her to civil hospital. On having careful scrutiny of the aforesaid statement, we are of the considered opinion that the quarrel took place between the deceased and both the appellants and appellant No.1 gave her fist and kick blows but he had not stated anything to commit suicide, therefore, the element of Section 107 of IPC is undoubtedly absent. Besides this, the deceased in the instant case was under great stress and depression and was of a frustrated mind because of the frequent quarrels between the appellants and the deceased and she had decided to put an end to her life and therefore offence under Section 306 of IPC against appellant No.1 is not proved and therefore the conviction and sentence imposed on appellant No.1 for the offence under Section 306 of IPC is deserved to be quashed and set aside as the ingredients of Section 306 of IPC aer totally absent in the instant case.

10. In the aforesaid view of the matter, conviction recorded against appellant No.1 for commission of offence under section 306 of IPC can never be sustained and, therefore, it is deserved to be quashed an set aside.

11. Now this takes us to examine and consider the recording of conviction against both the appellants for commission of offence under section 498-A of the IPC. On further scrutiny of the evidence it is clear that the deceased was consistent that both the appellants were frequently quarrelling with her on trifle issues and therefore she was naturally subjected to mental and physical harassment at the hands of both the appellants. The contention of Mr. Dastoor, learned advocate who is appearing as amicus curiae, that such type of quarrel is not unusual in a family of downtrodden has no substance. It is the bounden duty of the husband and mother-in-law not to pick up quarrel with a girl who has come to their house after marriage after leaving her parental home. In this connection there is consistent evidence to show that she was subjected to mental and physical cruelty and, therefore, in our considered opinion offence under section 498-A is duly proved and the learned Additional Sessions Judge has rightly recorded conviction under Section 498-A of IPC against both the appellants. Therefore the said recording of conviction for the offence under Section 498-A is required to be confirmed and maintained.

12. Now the question that remains is as to what sentence should be awarded to both the appellants for commission of offence under section 498-A of IPC. Mr. Dastoor, learned advocate who appears as amicus curiae for the appellants has stated at the bar that appellant No.1 is in jail for last seven years and the maximum punishment prescribed for commission of offence under section 498-A of IPC is three years and therefore according to him there is no question of awarding further sentence to appellant No.1 for commission of offence under section 498-A of IPC. So far as appellant No.2 is concerned, Mr. Dastoor prayed that she is on bail and mercy may be shown to her looking to her age which according to him is about 57 years. For claiming mercy he has asserted that the incident had taken place in the year 1994 and up-till now she must have suffered mental agony and this mental agony itself is a sufficient punishment for the offence. Moreover, social stigma is also attached to her because of the conviction by the learned Additional Sessions Judge. He therefore requested that instead of sending her to jail heavy fine may be imposed.

13. So far as the submission made by Mr. Dastoor with regard to appellant No.1 is concerned, it is true that he is in jail for the last seven years in connection with the offences under sections 306 of IPC and 498-A of IPC. Since we have held that the offence punishable under Section 306 of IPC is not proved against appellant No.1, the conviction and sentence imposed by the learned trial Judge on him in that connection does not sustain. However, appellant No.1 is held guilty of the offence under Section 498-A of IPC. He has undergone imprisonment for more than three years which is the maximum punishment prescribed for the offence under Section 498-A of IPC. Therefore appellant No.1 is required to be set at liberty forthwith if not required in connection with any other case.

14. So far as appellant No.2 is concerned, we are of the opinion that she being the mother-in-law of the deceased, the sentence of three years' imprisonment awarded to her is required to be modified by reducing it to one year with a fine of RS.100/- and in default of payment of fine, further simple imprisonment for one month is required to be imposed upon her.

15. In the result, the appeal is partly allowed.

(i) The judgment and order of the learned Additional Sessions Judge recording conviction of appellant No.1 for

the offence punishable under section 306 of IPC is quashed and set aside and he is acquitted of the said offence.

(ii) So far as the judgment and order recording conviction of the appellants of the offence under section 498-A of IPC is concerned, it is maintained. Both the appellants are held guilty of the said offence.

(iii) Appellant No.1 Rameshbhai Somabhai Patanwadia has already undergone R.I. for seven years which is more than the maximums sentence for the offence under section 498-A of IPC and, therefore, he is ordered to be set at liberty forthwith if not required in connection with any other case.

(iv) So far as appellant No.2- Kashiben Somabhai Patanwadia is concerned, instead of three years as ordered by the learned Additional Sessions Judge, now she is ordered to suffer R.I. for one year and to pay fine of Rs.100/- and in default of payment of fine, to undergo simple imprisonment for one month more for the offence under Section 498-A of IPC. Appellant No.2 is on bail and therefore she is ordered to surrender on or before 13.2.2003 to serve out the sentence imposed on her. Since appellant No.2 is on bail her bail bonds shall stand cancelled and sureties are discharged. If appellant No.2 fails to surrender on or before 13.2.2003, the learned Sessions Judge, Surat is directed to issue non-bailable warrant against her to secure her presence to serve out the sentence imposed on her.

16. Before parting, we may place on record our appreciation for the assistance rendered by Mr. J. B. Dastoor, learned advocate as amicus curiae in this case who has assisted this Court in deciding this appeal.

(A.M. Kapadia, J.)

(H.H. Mehta, J.)

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